

FINAL STATEMENT OF REASONS

The California Department of Corrections (CDC) proposes amendments to Sections 3043.5, 3043.6, and 3044 of the California Code of Regulations (CCR), Title 15, to implement provisions of recent legislation regarding work time credits for inmates.

Assembly Bill (AB) 3000, 2001-2002 Session, added Penal Code (PC) Section 2933.3, which allows inmates eligible to earn one day of worktime credit for every one day of service who are assigned to a conservation camp by the CDC, to instead earn two days of worktime credit for every one day of service. This enhanced worktime credit applies to service performed after January 1, 2003. These regulations will bring the Department into compliance with the provisions of AB 3000.

The Department must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

Subsection 3043.5(e) is amended to provide for a process to determine an effective date in which inmates, who are injured on-the-job and assigned to Work Group F, shall revert to Work Group A-1 in the event the on-the-job injury excludes the inmate from conservation camp assignment. This is necessary to avoid any confusion and ensure that the two for one credit earning, pursuant to PC Section 2933.3, applies only to those eligible inmates who are able to perform the duties in a conservation camp assignment.

Subsection 3043.6(a)(1) is amended to clarify and include in the definition of a non-adverse transfer, the movement of an inmate from a non-secure camp or minimum support facility to a higher security level due to non-adverse reasons. Non-adverse is any reason that an inmate's placement is effected but was not caused by an action of the inmate. Possible reasons could include, but are not limited to, medical appointments and out to court. This clarification is necessary to avoid penalizing an inmate with the possible classification to an incorrect work group for a non-adverse transfer.

Subsection 3043.6(a)(2) is amended to provide that inmates assigned to Work Group F shall revert to Work Group A-1 in the event a non-adverse transfer results in removal from a conservation camp assignment. Pursuant to PC Section 2933.3, this is necessary to ensure that the two for one credit earning applies to eligible inmates in a conservation camp assignment.

Subsection 3043.6(c)(1) is amended to clarify the definition of an adverse transfer. The definition as provided in Section 3375(f)(1) pertains to classification and defines an adverse effect. This clarification is necessary as an inmate can have an adverse effect but it does not necessarily result in an adverse transfer.

Subsection 3043.6(c)(2) is amended to provide that if an inmate is removed from a program for adverse reasons and is subsequently exonerated of charges, the credit earning status of the inmate shall be reinstated and designated back to the level prior to

removal from assignment. This is necessary to avoid penalizing an inmate for an adverse transfer that is subsequently found not to be their fault.

Existing subsection 3043.6(c)(2) is renumbered to 3043.6(c)(3) and amended to include Work Group F inmates in the description of those inmates that will be reclassified to Work Group A-2 as the result of an adverse transfer. Pursuant to PC Section 2933.3, this is necessary to ensure that the correct work group status and the two for one credit earning are applied to those eligible inmates in conservation camp placement.

Existing subsection 3043.6(c)(3) is renumbered to new subsection 3043.6(c)(4).

Subsection 3043.6(f) is amended to clarify and provide that with the exception of inmates assigned to Work Group F, inmates approved for a Community Correctional Center (CCC) program shall retain their current work group status while en route to a CCC program. This clarification clears up the confusion that the inmate shall retain, not regain their current work group status. Also provided is that inmates assigned to Work Group F shall revert to Work Group A-1 effective the date removed from camp assignment. This is necessary to ensure that the two for one credit earning is only applied to those eligible inmates in a conservation camp assignment.

Subsection 3044(b)(1) is amended to bring the Department into compliance with PC Section 2933.3, and provide for the establishment of new Work Group F as the inmate work group for a full time conservation camp assignment. This will allow those inmates that are eligible to earn PC Section 2933 worktime credits to now be awarded two days credit for each day of qualifying performance.

Existing subsections 3044(b)(1), (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) are renumbered to 3044(b)(2), (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8) respectively and are unchanged.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal effect on Federal funding to the State, or private persons. Savings of approximately \$277,000 has been determined to be the fiscal impact on State or local government. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

PUBLIC COMMENTS:

Public Hearing: Held December 30, 2003 at 9:00 a.m.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING.

SPEAKER #1:

Comment A: Commenter states that she is the mother of an inmate who is incarcerated at California State Prison, Solano. The Commenter states that when a human being is in prison and working or going to school, that person should be entitled to a day for day served, which is called rehabilitation.

Accommodation: None.

Response A: The Department contends that the regulations in CCR, Title 15, Section 3044, clearly state and define each inmate work and training group, eligibility requirements, and related worktime credit that is earned for each.

Comment B: Commenter contends that as of January 1st, there are no more quarterly packages. She further contends that the department is taking away the privilege to be able to send clothing and food items to the prisons for their husbands, fathers, and sons.

Accommodation: None.

Response B: The Department contends that the above comment is insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment C: Commenter contends that taking away Thursday and Friday night visits will be a hardship on a lot of families. She asks that visiting be left as it is.

Accommodation: None

Response C: See Speaker #1, Response B.

Comment D: Commenter contends that in her opinion, sentencing is out of control, inhumane and unfair. Commenter states that she has been married for 43 years, her husband has worked for a swimming pool company for their whole marriage, but the sentencing is out of control. She contends that a person can realize their mistake in

two, three, and four years but a person serving a sentence for 13 and 25 years does not serve any purpose. Commenter feels that 85% time should be cut down to 65% time to help cut the prison population down, and also not destroy human dignity.

Accommodation: None.

Response D: See Commenter #1, Response B.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS

COMMENTER #1:

Comment A: Commenter states that it is heartening to see that CDC is finally willing to take steps to change regulations in favor of rehabilitation and reducing recidivism instead of job security for the CCPOA. The commenter also contends that the work time credit will be a great benefit to those inmates who are fortunate enough to have maintained connection with their families, in spite of the preposterous obstacles put in the path of fostering familial ties. Commenter also hopes that this program will also be augmented by the other recommendations from the Little Hoover Commission, which allow for more education while in prison so as to prepare the inmates for the working world.

Accommodation: None

Response A: The Department contends that although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Comment B: Commenter contends that it is clear that nothing is to be gained by keeping the parole eligible “lifers” incarcerated when they are the least likely recidivists, and in the interest of being “smart on crime”, this should also be a strong consideration.

Accommodation: None

Response B: See Commenter #1, Response A, above.

COMMENTER #2:

Comment A: Commenter asks which type or kinds of inmates are eligible for these work time credits.

Accommodation: None.

Response A: The Department contends that subsection 3044(b)(1) of these regulations, clearly state and make specific that an inmate who is assigned and reports to an established position in a conservation camp setting shall earn two-for-one credit.

Comment B: Commenter states that it is their understanding that inmates are classified by Levels I, II, III, and IV, and asks if this would apply to all levels of inmates, from non-violent to violent offenders.

Accommodation: None.

Response B: The Department contends that Level I and II inmates who are non-violent, and who meet eligibility requirements, are eligible for this program.

Comment C: Commenter asks when would an inmate start earning these credits?

Accommodation: None.

Response C: See Commenter #2, Response A, above.

COMMENTER #3:

Comment A: Commenter contends that once an inmate is in fire camp, he has a vested interest in receiving two-for-one credits. If the inmate becomes disabled due to an on-the-job injury, the Americans with Disabilities Act (ADA) should prevent CDC from placing him/her back to A1A (one-for-one) credits. Commenter also states that inmates in fire-camps could be out-to-court for more than 29 days.

Accommodation: None

Response A: The Department contends that the comment confuses the legal obligations of the Department regarding certain Work Group A-1 credit interests with those under Work Group F, and the duties to reasonably accommodate under the ADA. The Department also contends that the enhanced two-for-one credits available to Work Group F inmates are not vested at any time unlike certain A-1 credits, but instead are privileges available only to inmates who are physically and mentally able to perform conservation camp duties. If inmates are no longer able to perform their assigned duties due to injury, the CDC will make attempts to reasonably accommodate them at camp, but if that is not possible, they will be removed from the conservation camp and will no longer be eligible to earn the two-for-one credits.

Comment B: Commenter contends that other assignments in fire camp (e.g. clerk, maintenance, etc.) should be reserved to those inmates that may be injured and not able to go on fire crew status.

Accommodation: None.

Response B: The Department contends that it currently makes reasonable attempts to accommodate inmates who are injured and place them into other available positions in the conservation camp setting.

Comment C: Commenter contends that any inmate non-adversely removed from fire-camp due to medical reasons, and once medically able to go back to fire camp, he/she should have priority in going back to fire camp based on A1A/ 'F' date.

Accommodation: None.

Response C: The Department contends that it will make a reasonable attempt to assign those inmates, upon eligibility, to available positions in a conservation camp setting.

Comment D: Commenter contends that inmates who would otherwise be eligible for fire-camp, but instead are disabled, should be eligible for two-for-one (PC Section 2933.3) credits.

Accommodation: None.

Response D: See Commenter #3, Response A.

Comment E: Commenter contends that time spent in fire-camp training, should also be credited with two-for-one credits, as training is an extension of the camp program.

Accommodation: None.

Response E: The Department contends that pursuant to PC Section 2933.3, only inmates assigned to a conservation camp are eligible for the two-for-one credit earning.

COMMENTER #4:

Comment A: Commenter asks if the change in Title 15 regulations regarding sentence reduction of two days for every one day served in a conservation camp, apply to inmates assigned to a conservation camp who are doing 85% time.

Accommodation: None.

Response A: The Department contends that inmates, who have been convicted of certain offenses, by statute, must serve a specified period of time prior to minimum parole eligibility. Worktime credits cannot reduce the required minimum period of time that must be served.

COMMENTER #5:

Comment A: Commenter contends that the regulations governing two-for-one credits for those inmates assigned to a conservation camp, be amended or modified to include inmates who are doing 80% time. Commenter states that they are doing the same work

and putting their lives in danger to save property and lives. Commenter feels that all inmates who are in Work Group F should receive the two-for-one credits.

Accommodation: None.

Response A: See Commenter #4, Response A.

COMMENTER #6:

Comment A: Commenter states that he is an inmate and assigned as a Firefighter I, and was wondering why inmate firefighters assigned to facility fire departments were not included and/or mentioned in the statement of reasons.

Accommodation: None.

Response A: See Commenter #3, Response E.

Comment B: Commenter contends that firefighters in prison facilities have value, are very hard workers, and are dedicated to the job assigned. Commenter also states that even though being available to go on calls 24 hours a day, 7 days a week, he has yet to read of any time credits for facility fire department inmates. He hopes there will be a time when these firefighters are considered for two-for-one credits.

Accommodation: None.

Response B: See Commenter #3, Response E. The Department also contends it will comply with any future legislation regarding inmate worktime credit earning.

COMMENTER #7:

Comment A: Commenter contends that by his understanding, Work Group F will get two-for-one credit for five days of work, and one-for-one credit for each regular day off (RDO). Commenter also states that this is an old issue with A1A's as it is actually 7 days credit for 5 days work. He questions if it is now 14 days credit for 5 days work or is it 10 days credit for 5 days worked. Commenter suggests that the language could be a little clearer, something along the line of "shall be awarded two days of credit for each day of assignment."

Accommodation: None.

Response A: The Department contends that subsection 3044(b)(1) makes specific that inmates shall be awarded two days credit for each day of qualifying performance. Each RDO is considered and credited as a day of qualifying performance.

COMMENTER #8:

Comment A: Commenter states that he supports the suggestion that more good time be given to inmates who are first time offenders and would like to see a policy which

would give two days of good time for each day served. Commenter feels that this would result in much less expense for the state and would also help the family involved to contribute to society in a more positive way.

Accommodation: None

Response A: See Commenter #3, Response E.

COMMENTER #9:

Comment A: Commenter inquires if this proposed change is for fire camps only, and if it includes minimum security inmates housed in Chino and participating in the SAP program.

Accommodation: None.

Response A: See Commenter #3, Response E.

COMMENTER #10:

Comment A: Commenter states that they strongly oppose this action because it allows violent offenders to qualify for early release, which will pose a threat to society. Commenter contends that it would be wise to first consider the public's safety at hand, exclude all violent offenders, and only include non-violent inmates.

Accommodation: None.

Response A: See Commenter #2, Response B.

Comment B: Commenter contends that it would be beneficial to implement the provisions of PC Section 1170(d) and CCR Section 3076(b), (c), or (d) pursuant to PC Section 5058.3 and to adopt, amend, or repeal emergency regulations conducted pursuant to Government Code Section 11340. Commenter states by doing so, this would eliminate such emergencies from arising in the future and obtain financial relief for the state of California, the Director of CDC, and the people in the communities.

Accommodation: None.

Response B: See Commenter #1, Response A.

COMMENTER #11:

Comment A: Commenter contends that the changes to the California Code of Regulations (CCR), put into effect a discriminatory procedure for the classification, housing, and privileges allowed of the prisoner population, in violation of the 14th Amendment of the United States Constitution, Article I, Section 7(b); California Constitution, Article I, Section 24; PC Section 422.6; CCR, Title 15, Division 3, Sections 3004(a) and (c), and Section 3044(c)(1)(5).

Accommodation: None

Response A: See Commenter #1, Response A. Also, the Department contends that these regulations regarding the worktime credit earning of inmates does not deny any individual under its jurisdiction, their fundamental rights and equal protection of the laws.

The Department also contends that worktime credit is not a right but a privilege. PC Section 2933(b) states in part, "Worktime credit is a privilege, not a right. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932." Inmates who meet the eligibility requirements and are assigned to an available established position in a conservation camp setting, perform a dangerous and strenuous job that is unique and different from any other credit earning workgroup. Recognizing the unique nature of this position, PC Section 2933.3 was added which provides that any inmate who is assigned to a conservation camp and who is eligible to earn one day of worktime credit for every one day of service pursuant to Section 2933 shall instead earn two days of worktime credit for every one-day of service. The Department must comply with the provisions of this code.

Comment B: Commenter states that he has been incarcerated since August 1989 and in the CDC system since April 1990. He is earning his A1-A and reduced security level classification in work assignments at various prisons. For the past 10 years he has been a welder/fabricator and assigned to Prison Industry Authority. Commenter feels that many of the procedures set up by CDC are in fact discriminatory, and it is not fair that this enhanced worktime credit is only offered to a selected few. The commenter feels there should be more opportunities to receive the two-for-one credit.

Accommodation: None.

Response B: See Commenter #1, Response A. The Department also contends it must comply with and are restricted to the provisions of PC Section 2933.3.

Comment C: Commenter states that he applauds this action. He contends that the opportunity should be expanded to include prisoners such as himself, who have proven the change necessary to re-enter society by actively participating in rehabilitative programs. He states he has been working every allowed day to reduce their sentences via PC Section 2933 credits, but has been told they do not qualify for "camp" by the current regulations. Commenter states that prisoners working in a viable skill that can be transferred to mainstream society should be awarded this additional credit, which would help to reduce the inmate population in this current budget crisis.

Accommodation: None.

Response C: See Commenter #3, Response E.